IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 20608 of 2007(C)

AGAINST THE ORDER IN IA. 4664 /2006 IN OS.446/2006 of I ADDL.M.C.,ERNAKULAM

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PETITIONER:

P.V.RAJAPPAN, AGED 68 YEARS,
PUNNAKKAVELI HOUSE, SOUTH PARAVOOR P.O.,
MANAKKUNNAM VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS:

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1. VARKEY, AGED 70 YEARS,
W/O SEEMAN, KALLAKADAMBIL HOUSE,
THURUTHIKKARA KARA, PANGARAPPILLY P.O.,
MULANTHURUTHY VILLAGE, KANAYANNUR TALUK.

2. ELIYAMMA, AGED 67 YEARS,
W/O VARKEY, KALLAKADAMBIL HOUSE,
THURUTHIKKARA KARA, PANGARAPPILLY P.O.,
MULANTHURUTHY VILLAGE, KANAYANNUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.20608 OF 2007

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Dated this the 5th day of July, 2007

JUDGMENT

This writ petition is filed against the order of the I Addl.Munsiff's Court, Ernakulam in I.A.No.4664 of 2006 in O.S.No.446 of 2006. The said application was filed by the defendant to refer the matter to the Land Tribunal under Section 125 of the Kerala Land Reforms Act on the ground that he is claiming kudikidappu right over the property. The learned Munsiff dismissed the claim on the ground "contention is that petitioner is either owner or tenant. Owner or tenant cannot be kudikidappukaran. No tenancy can be created after 1.4.1964". All these observations are erroneous and the learned Munsiff has not taken care to understand the pleadings of the parties. In paragraph 3 of the written statement what the petitioner has contended is that the second plaintiff permitted the defendant who had no homestead or land in his possession either as owner or as tenant to use and occupy the plaint schedule property for the purpose of erecting a homestead. What is meant by the pleadings is that the petitioner was not having any land at all in the capacity of an owner or a tenant and therefore the plaintiff permitted him to erect a homestead. It is not a bar and therefore the said

observation of the learned Munsiff is to be set aside. Similarly the learned Munsiff has stated that any tenancy created after 1.4.1964 is invalid. It is true that under Section 74 of the Kerala Land Reforms Act, there is a prohibition of tenancy after 1.4.1964. Here, what is claimed is not tenancy right, but is only a kudikidappu right and there are innumerable number of decisions of this court that even if a person is permitted to construct a homestead after 1.1.1970 he will be entitled to kudikidappu right, if he is able to satisfy the other ingredients necessary to establish such right under Section 2(25) of the Kerala Land Reforms Act. Here the claim of kudikidappu is of the year 1968. Therefore the order under challenge is set aside and the I Addl.Munsiff's Court, Ernakulam is directed to reconsider the matter in the light of the observations mentioned above and find out whether the matter is to be referred under the Land Reforms Act on the question of kudikidappu. Before hearing the matter, the court is directed to give a notice to the plaintiffs.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-